

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:NER:MAN:TL-N-9445-94

EPFlores

BY REGULAR MAIL AND FACSIMILE

date:

to: Chief, Examination Division, Manhattan District
Attention: Jim Butler

from: District Counsel, Manhattan

subject:

Consents to Extend the Statute of Limitations For Withholding Tax
STATUTE OF LIMITATIONS EXPIRES ON [REDACTED]¹

UIL NOS. 6501.04-02, 6502.03.00

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This memorandum is our response to your request for advice as to whether certain consents to extend the statute of limitations (Form 872) included, in their respective captions, the proper name of the subject taxpayers. You have requested our advice about the following consents to extend the statute of limitations²:

1. [REDACTED] (" [REDACTED] ") and the

¹ The statute of limitations is [REDACTED] only if the subject consents to extend the statute of limitations are invalid.

² All of these agreements will be collectively referred to as the "consents".

Service executed a Form 872 (for withholding tax under I.R.C. §§ 1441-1464³) on [REDACTED] and [REDACTED], respectively, extending the statute of limitations to [REDACTED] for the taxable year [REDACTED]. The name of the taxpayer on this Form 872 is "[REDACTED]".

2. [REDACTED] ("[REDACTED]") and the Service executed a Form 872 (for withholding tax under §§ 1441-1464) on [REDACTED] and [REDACTED], respectively, extending the statute of limitations to [REDACTED] for the taxable year [REDACTED]. The name of the taxpayer on this Form 872 is "[REDACTED]".

3. [REDACTED] ("[REDACTED]") and the Service executed a Form 872 (for withholding tax under §§ 1441-1464) on [REDACTED] and [REDACTED], respectively, extending the statute of limitations to [REDACTED] for the taxable year [REDACTED]. The name of the taxpayer on this Form 872 is "[REDACTED]".

4. [REDACTED] ("[REDACTED]") and the Service executed a Form 872 (for withholding tax under §§ 1441-1464) on [REDACTED] and [REDACTED], respectively, extending the statute of limitations to [REDACTED] for the taxable year [REDACTED]. The name of the taxpayer on this Form 872 is "[REDACTED]".

5. [REDACTED] ("[REDACTED]") and the Service executed a Form 872 (for withholding tax under I.R.C. §§ 1441-1464) on [REDACTED] and [REDACTED], respectively, extending the statute of limitations to [REDACTED] for the taxable year [REDACTED]. The name of the taxpayer on this Form 872 is "[REDACTED]".

[REDACTED], [REDACTED], and [REDACTED] are subsidiaries of [REDACTED] and were part of a consolidated group during the taxable year ending December 31, [REDACTED]. This consolidated group filed a consolidated return (for income tax) for the taxable year ending December 31, [REDACTED], and [REDACTED] filed separate returns for withholding taxes under §§ 1441-1464 because withholding taxes could not be included in the consolidated income tax liability. See Treas. Reg. § 1.1502-11. During the taxable year ending December 31, [REDACTED], [REDACTED], a Delaware corporation, was the common

³ All further references to "\$" will be to the Internal Revenue Code in effect during the year in question.

parent, i.e., the highest tier domestic corporation, for the consolidated group.

You requested our advice about whether the consents, which were executed in [REDACTED], included the proper names of the subject taxpayers in light of the [REDACTED] stock purchase of [REDACTED], the details of which are described in the "Facts" portion of this memorandum. If the proper parties did not execute the consents, the consents would be invalid and the statute of limitations for the §§ 1441-1464 withholding tax liabilities of [REDACTED] and [REDACTED] will expire on [REDACTED] (the "withholding tax liabilities"). Our advice is based on the facts provided by you and that are set forth in this memorandum.

ISSUE:

What specific language should be used on the the consents to extend the statute of limitations for the subject taxpayers for withholding tax under §§ 1441-1464 for the taxable year [REDACTED]?

FACTS:

On [REDACTED], the [REDACTED] ("[REDACTED]"), a Canadian corporation, announced that it had accepted approximately [REDACTED]% of the shares of [REDACTED] (a publicly traded Dutch corporation) tendered pursuant to a tender offer by [REDACTED]. On [REDACTED], [REDACTED] through [REDACTED] (a Netherlands corporation in which [REDACTED] indirectly held [REDACTED]%), purchased approximately [REDACTED]% of the stock of [REDACTED] pursuant to this tender offer. [REDACTED] claims that this purchase was a qualified stock purchase within the meaning of § 338(d)(3). [REDACTED] will make a § 338(g) election for [REDACTED] which, if proper, resulted in a deemed transfer, at the close of [REDACTED], by [REDACTED] of all of its assets, including a [REDACTED]% stock interest in [REDACTED]. This § 338(g) election for [REDACTED], if proper, also resulted in a deemed transfer, at the close of [REDACTED] of [REDACTED]% of the stock of [REDACTED], a wholly-owned subsidiary of [REDACTED]. [REDACTED] will also make a § 338(g) election for [REDACTED] which, if proper, resulted in a deemed transfer, at the close of [REDACTED], by [REDACTED] of all of its assets, including the remaining [REDACTED]% stock interest in [REDACTED].

Subsequently, pursuant to a "Stock Purchase Agreement" dated

[REDACTED] transferred [REDACTED] shares of common stock of [REDACTED] to [REDACTED] (" [REDACTED] "), a Delaware corporation owned by [REDACTED] in exchange for a promissory note in the amount of \$ [REDACTED]. Pursuant to a "Stock Purchase Agreement" dated [REDACTED], [REDACTED] (a [REDACTED] corporation) transferred [REDACTED] of common stock of [REDACTED] to [REDACTED] in exchange for a promissory note in the amount of \$ [REDACTED].⁴ The shares of common stock referred to above constituted, on [REDACTED], [REDACTED]% of the issued and outstanding stock of [REDACTED]. [REDACTED] has not claimed that its purchase of [REDACTED]'s stock was a qualified stock purchase under § 338 and [REDACTED] has not elected under § 338 to deem the stock purchase as a transfer of [REDACTED]'s assets to [REDACTED].

Furthermore, you have also informed us that the following statements are accurate: (1) [REDACTED] did not execute any merger and/or liquidation agreements in conjunction with its execution of the stock purchase agreements; (2) As a result of the stock purchase, [REDACTED] was not liquidated; (3) As a result of the stock purchase, [REDACTED] was not merged out of existence; (4) [REDACTED] continues to exist today as the common parent of the consolidated group; (5) As a result of the stock purchase, [REDACTED] did not change its name; (6) As a result of the stock purchase, [REDACTED] did not assume any of the tax liabilities of the consolidated group, [REDACTED], and/or any of the subsidiaries of the consolidated group for the taxable year ending December 31, [REDACTED]. (7) As a result of the stock purchase, [REDACTED] has not liquidated or otherwise disposed of any of the subsidiaries of [REDACTED], including [REDACTED], [REDACTED], and [REDACTED]; (8) As a result of the stock purchase, [REDACTED] has not liquidated or otherwise disposed of any of its subsidiaries including [REDACTED], [REDACTED], [REDACTED], and [REDACTED]; and (9) As a result of the stock purchase, [REDACTED], [REDACTED], and [REDACTED] have not changed their names.

DISCUSSION:

Under § 6501(c)(4), the Service and a taxpayer may consent in writing to an extension of the time for making an assessment if the consent is executed before the expiration of the normal

⁴ The transactions in these two agreements will be referred to as the stock purchase.

period of assessment or the extension date agreed upon in a prior extension agreement between the parties. In order to extend the period for assessment in the case of a corporate return, a Form 872 must be executed by a duly authorized officer of the corporation.

Although [REDACTED] is the common parent of the consolidated group, under Treas. Reg. § 1.1502.77, [REDACTED] is only authorized to be the sole agent for each of its subsidiaries in the consolidated group for matters relating to the tax liability for the consolidated return year. Since the withholding tax liabilities were not part of the consolidated return for the taxable year [REDACTED], [REDACTED], [REDACTED], and [REDACTED] are the proper parties to sign their respective consents. Furthermore, since neither [REDACTED] nor [REDACTED] has liquidated or otherwise disposed of these corporations and since all of the subject taxpayers did not change any of their names, the consents had the proper party in their respective captions.

Under § 6061, any return, statement or other document made under any internal revenue law must be signed in accordance with the applicable forms or regulations. The regulations under § 6501(c)(4) do not specify who may sign consents executed under that section. Accordingly, the Service will apply the rules applicable to the execution of the original returns to the execution of consents to extend the time to make an assessment. Rev. Rul. 83-41, 1983-1 C.B. 349, clarified and amplified, Rev. Rul. 84-165, 1984-2 C.B. 305. Under Treas. Reg. § 1.6062-1, returns that are required to be made by corporations under the provisions of subtitle A or subtitle F of the Internal Revenue Code with respect to any tax imposed by subtitle A (which includes the §§ 1441-1464 withholding taxes) shall be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer, or any other officer duly authorized to sign such returns.

Accordingly, any such officer of [REDACTED], [REDACTED], [REDACTED], and [REDACTED] is authorized to sign the consents. It is our understanding that you are not disputing the authority of the particular individuals that signed the consents on behalf of the subject corporations.

CONCLUSION:

Any such officer or director of [REDACTED] as described in § 6062 is authorized to execute the consents for the taxable year [REDACTED] for the withholding taxes. Since [REDACTED] and [REDACTED] have not been liquidated, merged out of existence, or otherwise disposed of and since they have not changed their names, the consents included the proper party and are, therefore, valid. Accordingly, the statute of limitations does not expire on April 15, [REDACTED] and will expire, pursuant to the consents, on [REDACTED]. If you have any questions, please call Lisa Flores at 212-264-5473 extension 232.

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